

**Letter of Findings: 04-20211043
Sales and Use Tax
For the Year 2021**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

Individual failed to substantiate that his purchase and use of an all-terrain vehicle qualified for a statutory exemption. As such, Indiana tax was properly assessed.

ISSUE

I. Sales and Use Tax - Burden of Proof.

Authority: IC § 6-2.5-5-2; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463 (Ind. 2012); *Dep't of Revenue, State of Ind. v. Kimball Int'l, Inc.*, 520 N.E.2d 454 (Ind. Ct. App. 1988); *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480 (Ind. Tax Ct. 2012).

Taxpayer argues that his purchase of an all-terrain vehicle was exempt from Indiana sales and/or use tax on the basis that the vehicle is used in the production of agricultural products.

STATEMENT OF FACTS

Taxpayer, an Indiana resident, purchased a Polaris Ranger 1000 all-terrain vehicle ("ATV") and additional accessories from an Indiana dealer in July 2021. Taxpayer did not pay sales tax at the time of the purchase or self-assess and remit use tax to the Indiana Department of Revenue ("Department").

Pursuant to an audit in August 2021, the Department requested that Taxpayer complete a Form AGQ-100, Agricultural Equipment Exemption Usage Questionnaire ("Form AGQ-100"), to document his uses of that ATV. Among 26 options of activities on that Form AGQ-100 - without allocating "Number of Days Used" for any particular activity - Taxpayer affirmatively checked the following activities:

- Field/pasture/livestock inspections
- Hauling Tools and Equipment
- Hauling trash/garbage
- Picking up rocks/debris from field
- Transporting farmer/employees
- Mowing or spraying of ditches, field boundaries, and barn yard areas
- Soil sampling and testing

Taxpayer signed and submitted the incomplete Form AGQ-100 on August 4. The Department subsequently followed up with a letter, requesting Taxpayer provide his most recent Schedule F to his federal income tax return and a complete Form AGQ-100, to document number of days concerning his uses of that ATV. Taxpayer did not respond. Based on Taxpayer's incomplete Form AGQ-100, the Department found that Taxpayer's uses did not qualify for any exemption and assessed Taxpayer additional tax as a result.

Taxpayer disagreed with the assessment and submitted a protest to that effect. Taxpayer waived his right to an administrative hearing and requested that the protest be addressed based on the documentation provided to the Department. This Letter of Findings results. Further relevant facts will be addressed below as necessary.

I. Sales and Use Tax - Burden of Proof.

DISCUSSION

Taxpayer did not respond to the Department's request for additional documents to substantiate and enumerate his uses of that ATV. Thus, based on Taxpayer's incomplete Form AGQ-100, the Department found that Taxpayer's uses did not qualify for any exemption and assessed Taxpayer additional tax.

Taxpayer disagreed and stated the following:

This letter is my statement of protest on the Letter [Number] in response to the denial of the agriculture sales tax exemption related to the purchase of Polaris Ranger 1000 ATV. This vehicle will be primarily used in the direct production of agriculture. Its usage will include the following; to feed exempt animals, plant seeds, fertilize crops, and apply pesticides and fungicides. To move exempt items such as seeds, plants, fertilizers, pesticides, and fungicides from temporary storage to a location where such will be used in an exempt process. This vehicle will be used 365 days a year in the above jobs.

Taxpayer, however, did not offer any explanation or verifiable documents to support his protest. Thus, the issue is whether Taxpayer provided sufficient documentation demonstrating that he was entitled to the exemption and that the Department assessment was incorrect.

Under Indiana law, "Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability. . . ." IC § 6-8.1-5-4(a). When the Department issued a proposed assessment, "[t]he notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC § 6-8.1-5-1(c). See also *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012). In applying any tax exemption, the general rule is that "tax exemptions are strictly construed in favor of taxation and against the exemption." *Dep't of Revenue, State of Ind. v. Kimball Int'l., Inc.*, 520 N.E.2d 454, 456 (Ind. Ct. App. 1988). Further, Taxpayer is required to provide verifiable documentation explaining and supporting his challenge that the Department's determination is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012).

In his protest letter, Taxpayer simply argued that his purchase was exempt from Indiana sales tax because his uses of the ATV - including (1) "to feed exempt animals, plant seeds, fertilize crops, and apply pesticides and fungicides" and (2) "[t]o move exempt items such as seeds, plants, fertilizers, pesticides, and fungicides from temporary storage to a location where such will be used in an exempt process" - qualified for the "agriculture sales tax exemption."

Upon review, however, Taxpayer was mistaken. On his signed Form AGQ-100, Taxpayer did not affirmatively mention the above activities. Rather, among 26 options on that form, Taxpayer specifically checked the following:

- Field/pasture/livestock inspections
- Hauling Tools and Equipment
- Hauling trash/garbage
- Picking up rocks/debris from field
- Transporting farmer/employees
- Mowing or spraying of ditches, field boundaries, and barn yard areas
- Soil sampling and testing

Taxpayer did not offer any explanation regarding the discrepancy and verifiable documents to substantiate that his uses of the ATV in question met the double-direct standard as required under IC § 6-2.5-5-2 and IC § 6-8.1-5-4. Therefore, given the totality of the circumstances, in the absence of verifiable supporting documentation, the Department is not able to agree that Taxpayer met his burden proving that the Department's proposed assessment was wrong.

In short, Taxpayer failed to substantiate that his uses of ATV qualified for a statutory exemption. Therefore, Taxpayer has not met the burden imposed under IC § 6-8.1-5-1(c) of proving the proposed assessment wrong. As such, the assessment was properly imposed.

FINDING

Taxpayer's protest is respectfully denied.

April 11, 2022

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